

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE,
OFFICE OF THE MONTANA STATE AUDITOR**

IN THE MATTER OF

CLEAR SPRING PROPERTY AND
CASUALTY COMPANY,

Respondent.

Case No. INS 2021-313B

**CONSENT AGREEMENT AND
FINAL ORDER**

This *Consent Agreement and Final Order (Agreement)* is entered into by the Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), acting pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 *et seq.* (Code), and Respondent Clear Spring Property and Casualty Company (Clear Spring or Respondent).

The *Final Order (Order)* is issued by the authority of the Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner).

RECITALS

WHEREAS, Respondent, which has its administrative offices in Chicago, Illinois, has offered workers compensation insurance in Montana;

WHEREAS, in 2019 Respondent entered into a written agreement with Victory Insurance Company (Victory or MGA) to engage Victory to act as its managing general agent (MGA) to place business, including administration of claims, sold on Clear Spring paper for its Montana book of business (MGA Agreement);

WHEREAS, in 2021 Respondent terminated the MGA Agreement, and litigation between Respondent and Victory ensued; however, through informal agreements and court proceedings, Victory has continued to perform some MGA functions for Respondent;

WHEREAS, after investigation, CSI issued a *Notice of Proposed Agency Action and Opportunity for Hearing (Notice)* on September 30, 2021, alleging that Respondent violated Mont. Code Ann. § 33-2-1601 because it employed an MGA that was not licensed as a business entity producer in Montana; and violated Mont. Code Ann. § 33-2-1602 in two respects because it allowed the placement of its business by an MGA under a written contract that did not contain two provisions required by Montana law;

WHEREAS, the violations alleged by CSI against Respondent are grounds to impose fines pursuant to Mont. Code Ann. §§ 33-1-317 and 33-2-1605;

WHEREAS, after further investigation of information provided by Respondent, CSI discovered additional facts which did not support pursuing a violation of Mont. Code Ann. § 33-2-1601, and CSI agrees to withdraw Assertion of Law ¶9 of the *Notice* concerning the lack of a business entity producer license;

WHEREAS, Respondent does not wish to contest the alleged violations of Mont. Code Ann. § 33-2-1602, set forth in the *Notice* as Assertions of Law ¶10.a and ¶10.b and voluntarily enters this *Agreement* and consents to the entry of a *Final Order*, below, concerning those two violations;

WHEREAS, the CSI believes that the best interests of the public would be served by entering into this *Agreement*;

NOW THEREFORE, in consideration of the mutual undertakings contained in this *Agreement*, the Parties agree to settle this matter as follows:

CONSENT AGREEMENT

1. The Commissioner has jurisdiction over Respondent and the subject matter of this matter pursuant to Mont. Code Ann. § 33-1-101 *et seq.*

2. The effectiveness of this *Agreement* is expressly conditioned on and subject to the adoption and incorporation of this *Agreement* into a final order. This *Agreement* will become effective on Commissioner's execution of the *Final Order*, below.

3. Respondent stipulates and consents as follows:

a. Respondent had the opportunity to consult with counsel of its choosing in the review and execution of this *Agreement*; and Respondent enters into this *Agreement* voluntarily and represents CSI has made no representations or warranties except as expressly set forth herein.

b. Respondent does not contest the alleged violations of Mont. Code Ann. § 33-2-1602(4) and (8)(c), set forth in the *Notice* as Assertions of Law ¶10.a and ¶10.b, and consents to entry of a final order imposing a fine of Five Thousand Dollars and Zero Cents (\$5,000.00) for each violation, pursuant to Mont. Code Ann. §§ 33-1-317 and 33-2-1605.

c. Respondent agrees to pay a total fine of Ten Thousand Dollars and Zero Cents (\$10,000.00) to CSI within fifteen (15) business days of the entry of the *Final Order*, below. Payment shall be made by check or money order payable to "The State of Montana" sent to CSI, Attn: Brandy Morrison, Paralegal, 840 Helena Ave., Helena, MT 59601.

d. With respect to the facts and legal assertions set forth in the *Notice* and this *Agreement*, including any modifications stated herein, Respondent specifically and affirmatively waives a contested case hearing and any appeal rights under the Montana Administrative Procedure Act, including, without limitation, Mont. Code Ann., Title 2, chapter 4, part 7, and elects to resolve this matter on the terms and conditions set forth in this *Agreement*.

e. Respondent further acknowledges and agrees that any failure to comply with this *Agreement* and the *Final Order* may constitute a separate and additional violation of the Code, as provided in Mont. Code Ann. § 33-1-318, and

may result in subsequent legal action by CSI, including, without limitation, entry of a default order.

f. Respondent fully and forever releases and discharges CSI from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of or related to this *Agreement* or the matters set forth in the *Notice*.

4. CSI stipulates and consents as follows:

a. This *Agreement* fully resolves the matters set forth in the *Notice* against Respondent.

b. So long as Respondent complies with this *Agreement*, CSI will not seek further relief against Respondent for the conduct described in the *Notice* or arising from facts known to CSI as of the date of this *Agreement* relating to the Recitals, except as set forth in this *Agreement*.

5. This *Agreement* is entered without adjudication of any issue, law, or fact. It is entered solely for the purpose of resolving the matters set forth in the *Notice* and this *Agreement* and is not intended to be used for any other purpose. For any person or entity not a party to this *Agreement*, this *Agreement* does not limit or create any private rights or remedies against Respondent, limit or create liability of Respondent, or limit or create defenses of Respondent to any claims.

6. This *Agreement* constitutes the entire agreement between the parties and supersedes any other promises, understandings, or agreements, oral or written, between the parties related to the subject matter of the *Notice* or this *Agreement*. This *Agreement* may not be modified except pursuant to a written agreement, with the same formality as this *Agreement*, executed by all parties.

7. This *Agreement* is governed by and to be construed in accordance with Montana law, notwithstanding its conflict-of-law principles. Except for the administrative proceedings before CSI, any litigation arising out of or related to this *Agreement* and *Final*

Order will be brought exclusively in the First Judicial District for Lewis and Clark County, State of Montana; these parties consent and submit to the jurisdiction of such court for such purposes. This *Agreement* will be interpreted according to its fair meaning and not strictly for or against any party. Headings are for convenient reference only and are not intended to define, enlarge, or limit any of the terms of this *Agreement*.

8. This *Agreement* is a public record under Montana law and, as such, may not be sealed or otherwise withheld from the public.

9. This *Agreement* will be incorporated into and made part of the attached *Final Order* executed by the Commissioner. On execution of the *Final Order*, this *Agreement* will constitute an order of CSI and the parties acknowledge and agree that CSI will have jurisdiction over the enforcement of this *Agreement*.

[Remainder of this page intentionally left blank.]

10. Each signatory to this *Agreement* is duly authorized to execute this *Agreement* on behalf of the applicable party. This *Agreement* may be executed in counterparts, each of which will be considered an original and all of which together will constitute a single instrument. Electronic signatures and copies of signature by facsimile, electronic scan or other electronic means will be considered original signatures.

DATED this 28 day of October, 2021.

RESPONDENT



CLEAR SPRING PROPERTY AND CASUALTY
COMPANY

Reviewed and approved for content:



SCOTT HANFLING
Counsel for Respondent

DATED this 28th day of October, 2021.

**OFFICE OF THE MONTANA STATE AUDITOR,
COMMISSIONER OF SECURITIES AND
INSURANCE**

 10/28/2021

KIRSTEN K. MADSEN
Legal Counsel

FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. §§ 2-4-603 and 33-1-101 *et seq.*, and upon review of the foregoing *Consent Agreement and Final Order (Agreement)* between CSI and Respondent Clear Spring, and good cause appearing,

IT IS HEREBY ORDERED that the foregoing *Agreement* is adopted and incorporated into this *Final Order* as if set forth fully herein.

DATED this 1st day of November, 2021.



TROY DOWNING

Commissioner of Securities and Insurance,
Montana State Auditor

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2021, I caused a copy of the foregoing, *Consent Agreement and Final Order*, to be served on the following persons by the following means:

_____ Mail
1 _____ E-Mail

1. Clear Spring Property and Casualty Company
c/o Scott Hanfling
Scott.Hanfling@delawarelife.com


